

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

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FILE: B-180530

DATE: July 10, 1974

MATTER OF: Royal Industries
Department of Agriculture IFB 124-M-APHIS-74

- DIGEST:
1. Bidder's failure to submit Disclosure Statement of Cost Accounting Practices and Certification concurrent with initial bid submission in formally advertised procurement is not fatal to its responsiveness as a bidder since requirement is not applicable to non-negotiated, nondefense contracts. FPR Temporary Regulation 27.
 2. Solicitation requirement for submission of bid samples after bid opening is improper since it is not conducive to making prompt awards as contemplated by 41 U.S.C. 253(b), and Government may effectively be deprived of low bid because of outright refusal to submit sample or submission of sample which is deliberately nonresponsive. While no need is apparent for upsetting instant solicitation, GAO recommends defect be corrected in future procurements. 46 Comp. Gen. 406, 409 (1966).

The Department of Agriculture invited bids on a requirements-type contract for an estimated quantity (3600) of frozen specimen shipping containers for use by its Meat and Poultry Inspection Service of the Animal and Plant Health Inspection Service. Royal Industries (Royal) originally protested the award of a contract under this IFB to any firm other than Royal, citing all other bidders as nonresponsive for want of compliance with various bidding requirements. Royal additionally takes exception to the contracting officer's determination that their firm was nonresponsive to the IFB. While another bidder, E. R. Hitchcock & Associates protested the use of a requirements-type contract, the firm has withdrawn its protest.

The Department has advised this Office that it considers all bidders to be nonresponsive and that it proposes to negotiate a contract for its immediate requirements unless this Office determines that Royal's bid is responsive. Since the agency and Royal agree that all bids other than Royal's are unacceptable, we see no reason to consider the merits of Royal's arguments to that effect.

Accordingly, the only remaining question presented for our consideration is whether the contracting officer properly rejected Royal's bid for failure to submit a "Disclosure Statement" and the appropriate certification.

As to contract awards in excess of \$100,000, the solicitation provided in part:

"* * * Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of the Cost Accounting Standards Board must, as a condition of contracting, submit a Disclosure Statement as required by the regulations of the Board. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation * * * unless * * *."

The initial promulgation of the Cost Accounting Standards Board (4 CFR 331 et seq.) prescribes Cost Accounting Standards, rules, and regulations applicable to the negotiation of national defense contracts and requires the disclosure of cost accounting practices to be used in such contracts. In the interest of maintaining uniform Government-wide procurement policies and procedures, Cost Accounting Standards were adopted for both negotiated defense and nondefense contracts of the civilian executive agencies by Temporary Regulation 27 of the Federal Procurement Regulations (FPR). (See paragraph 5(a) and paragraph 7, § 1-3.1201 and 1-3.1203).

Inasmuch as Temporary Regulation 27 was intended to apply only to certain negotiated contracts and the instant procurement was formally advertised rather than negotiated, it is clear that Royal's bid should not be rejected for failure to submit prior to bid opening the Disclosure Statement of Cost Accounting Practices and Certification.

For this reason, we do not sustain the contracting officer's rejection of Royal's bid on the basis of the present record.

Finally, we wish to note our concern with the requirement in the subject solicitation for submission of bid samples after the time set for bid opening. In this connection FPR 1-2.202-4(e) requires that samples be submitted prior to bid opening. In our decision 46 Comp. Gen. 406, 409 (1966) we opined that bids should

be submitted in a manner which will permit their evaluation without requesting further information or material from the bidders. We further stated that a requirement for submission of bid samples after opening is generally undesirable since it is not conducive to the making of prompt awards as contemplated by 41 U.S.C. 253(b), and the Government may effectively be deprived of a low bid because of an outright refusal to submit a sample or the submission of a sample which is deliberately nonresponsive to the advertised specifications. While we see no need for upsetting the instant solicitation, we recommend that this defect be corrected in future procurements.


Deputy Comptroller General
of the United States